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June 17, 2022

Vanessa Countryman, Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: File Number S7-10-22
Proposed Rule - The Enhancement and Standardization of Climate-Related Disclosures for Investors

Dear Office of the Secretary:

We appreciate the opportunity to comment on the Securities and Exchange Commission's ("SEC" or "Commission") proposed Rule referenced above. Our comments will be in the form of responses to specific questions included in the proposed Rule.

We support the SEC in its continued efforts towards enhancing the consistency, comparability and reliability of climate-related information provided to investors and other stakeholders.

Materiality

Question 66: The proposed financial impact metrics would not require disclosure if the absolute value of the total impact is less than one percent of the total line item for the relevant fiscal year. Is the proposed threshold appropriate? Should we use a different percentage threshold (e.g., three percent, five percent) or use a dollar threshold (e.g., less than or greater than $1 million)? Should we use a combination of a percentage threshold and a dollar threshold? Should we only require disclosure when the financial impact exceeds the threshold, as proposed, or should we also require a determination of whether an impact that falls below the proposed quantitative threshold would be material and should be disclosed?

Question 76: Should we apply the same disclosure threshold to the expenditure metrics and the financial impact metrics? Is the proposed threshold for expenditure metrics appropriate? Should we use a different percentage threshold (e.g., three percent, five percent) or use a dollar threshold (e.g., less than or greater than $1 million)? Should we use a combination of a percentage threshold and a dollar threshold? Should we only require disclosure when the amount of climate-related expenditure exceeds the threshold, as proposed, or should we also require a determination of whether an amount of expenditure that falls below the proposed quantitative threshold would be material and should be disclosed? Should we require separate aggregation of the amount of expense and capitalized costs for purposes of the threshold, as proposed? Should we require separate aggregation of expenditure relating to the climate-related events and transition activities, as proposed?

Response:

We understand that one percent thresholds are currently used in financial reporting. As defined by the SEC and consistent with Supreme Court precedent, a matter is material if there is a substantial likelihood that a reasonable investor would consider it important when determining whether to buy or sell securities or how to vote[1]. However, those thresholds are generally applied to larger amounts in the financial statements, such as

[1] Proposed Rule - The Enhancement and Standardization of Climate-Related Disclosures for Investors, Page 64

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total assets, revenues, and net asset value. We do not believe the one percent threshold is appropriate, and the traditional concept of materiality to the financial statements as a whole should apply. A separate one percent threshold, which would result in disclosures even less than the threshold given the absolute value of the principle, could result in undue prominence relative to other significant accounts in the financial statements that would otherwise not be material to investors.

Audit/Attest Standards

Question 91: Under the proposed rules, PCAOB auditing standards would be applicable to the financial statement metrics that are included in the audited financial statements, consistent with the rest of the audited financial statements. What, if any, additional guidance or revisions to such standards would be needed in order to apply PCAOB auditing standards to the proposed financial statement metrics? For example, would guidance on how to apply existing requirements, such as materiality, risk assessment, or reporting, be needed? Would revisions to the auditing standards be necessary? What additional guidance or revisions would be helpful to auditors, preparers, audit committee members, investors, and other relevant participants in the audit and financial reporting process?

Response:

As proposed, the climate-related financial statement disclosure would generally be an amount smaller than overall materiality used for the financial statements. While PCAOB Auditing Standard 2105.07 contemplates circumstances in which the auditor may establish alternative materiality levels for certain accounts or disclosures, that guidance is based on the auditor's judgment and consideration of users of the financial statements. Consequently, we believe additional guidance surrounding the audit procedures and risk assessment process would be needed, as some of the items within the climate-related disclosure might not be part of significant, in-scope accounts subject to PCAOB auditing standards. Thus, this could create inconsistencies and inefficient audit procedures resulting in increased audit costs and therefore costs to preparers.

Question 141: Under prevailing attestation standards, "limited assurance" and "reasonable assurance" are defined terms that we believe are generally understood in the marketplace, both by those seeking and those engaged to provide such assurance. As a result, we have not proposed definitions of those terms. Should we define "limited assurance" and "reasonable assurance" and, if so, how should we define them? Would providing definitions in this context cause confusion in other attestation engagements not covered by the proposed rules? Are the differences between these types of attestation engagements sufficiently clear without providing definitions?

Response:
We agree that the attestation engagement and report be performed under standards that are publicly available at no cost by an established body. We believe that the current standards of the AICPA and IAASB meet these requirements.

Although the PCAOB attestation standards would meet the requirements, they are interim adopted standards from the AICPA in 2003. While the PCAOB has recently updated its standard-setting agenda to include consideration of the interim attestation standards, with an anticipated proposal in 2022, the outcome of this project and the timing of final standards is uncertain. Currently, registrants that include voluntary reporting and attestation of ESG (Environmental, Social and Governance) metrics use AICPA attest standards. According to a Center for Audit Quality study[2], all the U.S. S&P 500 companies that obtained attest reports used AICPA attest standards.

[2] https://www.thecaq.org/sp-500-and-esg-reporting/

We recommend the attest standards be limited to those issued by the AICPA (or IAASB, for foreign registrants), and therefore no definitions would be required from the SEC, given the definitions are covered by the AICPA/IAASB. These standards would be governed by the same requirements; thus, a non-CPA firm would be excluded from using AICPA standards. If the standards are not limited to those of the AICPA/IAASB, we suggest that SEC define the terms “limited” and “reasonable” assurance, using the definitions in the AICPA/IAASB standards, as well as provide guidance for standards to be used by non-CPA firms, if permissible.

Scope / Registrant Status

Question 56: Should information for all periods in the consolidated financial statements be required for registrants that are filing an initial registration statement or providing climate-related financial statement metrics disclosure for historical periods prior to the effective date or compliance date of the rules? Would the existing accommodation in Rules 409 and 12b-21 be sufficient to address any potential difficulties in providing the proposed disclosures in such situations?

Response:
We believe that in the initial year of adoption, the financial statement requirements be applied prospectively (i.e., not required for all years presented in the filing without a registrant having to invoke Regulation S-K Rule 409 and/or Regulation S-X Rule 12b-21). In the initial year of adoption, the registrant would not be required to provide disclosures for historical periods. We believe the current and proposed rules are not clear as to when a registrant could take advantage of the accommodation and conclude the metric is not available without unreasonable effort or expense.

Question 175: Should the proposed climate-related disclosures be required in Exchange Act reports and registration statements, as proposed? Should we exempt SRCs from all of the proposed climate-related disclosure rules instead of exempting them solely from Scope 3 emissions disclosure requirements, as proposed? Should we exempt SRCs from certain other proposed climate-related disclosure requirements and, if so, which requirements? For example, in addition to the proposed exemption from Scope 3 emissions disclosure, should we exempt SRCs from the proposed requirement to disclose Scopes 1 and 2 emissions? Are there certain types of other registrants, such as EGCs or business development companies (“BDCs”), that should be excluded from all or some of the proposed climate-related disclosure rules?

Question 179: Are there certain registration statements or annual reports that should be excluded from the scope of the proposed climate-related disclosure rules? For example, should we exclude Securities Act registration statements filed in connection with a registrant’s initial public offering? Would such an accommodation help address concerns about the burdens of transitioning to public company status? We have not proposed to require climate-related disclosures in registration statements on Form S-8 or annual reports on Form 11-K. Should we require such disclosures?

Question 180: Should we require climate-related disclosure in Forms S-4 and F-4, as proposed? Should we provide transitional relief for recently acquired companies? For example, should we provide that a registrant would not be required to provide the proposed climate-related disclosures for a company that is a target of a proposed acquisition under Form S-4 or F-4 until the fiscal year following the year of the acquisition if the target company is not an Exchange Act reporting company and is not the subject of foreign climate-related disclosure requirements that are substantially similar to the Commission’s proposed requirements? Should such transitional relief in this instance be for a longer period than one year and, if so, for how long should such transitional relief extend?

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Response:
We believe that additional transition relief should be provided to emerging growth companies (EGCs), Securities Act registration statements filed in connection with a registrant's initial public offering, and for recently acquired companies. Similar transition relief could be provided by analogy to the current transition relief of Sarbanes-Oxley 404(b) compliance. Additionally, because the objective of defining Smaller Reporting Companies (SRCs) is to promote capital formation and reduce compliance costs for specified registrants by provided scaled disclosure while maintaining appropriate investor protections[3], we believe that it would be appropriate to exempt SRCs from all the proposed climate-related disclosure rules.

We appreciate the opportunity to provide the above comments and are available for further discussion with the Staff or the Commission if that would be useful to the process. Should you wish to discuss any of our comments, please contact Joe Donnelly, Professional Practice Group Partner, at

Sincerely,

Baker Tilly US, LLP

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[3] SEC Smaller Reporting Company Definition [Release Nos. 33-10513; 34-83550; File No. S7-12-16]